UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA Norfolk Division

DEC 2 0 2012

CLERK, US DISTRICT COURT
NORFOLK, VA

DOUGLAS MICHAEL BROWN, JR., #1006008,

:

Petitioner,

Of Corrections,

Civil Action No. 2:12cv117

v.

HAROLD CLARKE,

Director Virginia Department

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254. The petition alleges violation of petitioner's constitutional rights pertaining to his conviction of grand larceny in the Circuit Court of Colonial Heights, as a result of which he was sentenced to serve 20 years in prison.

The petition was referred to a United States Magistrate Judge for report and recommendation pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Local Civil Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia. The Magistrate Judge's Report and Recommendation filed November 16, 2012 recommends dismissal of the petition with prejudice. Each party was advised of his right to file written objections to the findings and recommendations made by the Magistrate Judge. On December 3, 2012, the court received

petitioner's Objections to the Report and Recommendation. The respondent filed no reply to the Objections, and the time for responding has now expired.

The court does hereby adopt the findings and recommendations set forth in the Report and Recommendation filed November 16, 2012, and it is therefore ORDERED that respondent's Motion to Dismiss be GRANTED, and that the petition be DENIED and DISMISSED with prejudice. It is further ORDERED that judgment be entered in favor of respondent.

Petitioner may appeal from the judgment entered pursuant to this Final Order by filing a <u>written</u> notice of appeal with the Clerk of this court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty (30) days from the date of entry of such judgment.

Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right," therefore, the court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. See Miller-El v. Cockrell, 123 S.Ct. 1029, 1039 (2003).

The Clerk shall mail a copy of this Final Order to petitioner and to counsel of record for respondent.

Rebecca Beach Smith
Chief
United States District Judge

FBS-

REBECCA BEACH SMITH
CHIEF UNITED STATES DISTRICT JUDGE

Norfolk, Virginia

<u>December 12</u>, 2012